Kedai Pajak Fah Ngien & Ors v Public Prosecutor

HIGH COURT (MELAKA) — CRIMINAL REVISION NO 44–04 OF 2001
LOW HOP BING J
29 MARCH 2002

Pawnbrokers — *Dealing with mercantile agent — Pawning of loan jewellery by borrower — Jewellery contractually surrendered and entrusted to accused but accused pawned jewellery — Whether jewellery came to possession of accused as mercantile agent for owner — Sale of Goods Act 1957 s 2*

Pawnbrokers — *Inquiry as to ownership — Order for return of pawned property — Review of order that pawned jewellery be returned to owners — Jewellery contractually surrendered and entrusted to accused but accused pawned jewellery — Whether any suspicious circumstances that property was unlawfully obtained — Whether duty on pawnbroker to investigate origin of jewellery — Pawnbrokers Act 1972 ss 29 & 32*

Pawnbrokers — *Pawning of loan jewellery by borrower — Review of order that pawned jewellery be returned to owners — Borrower convicted of dishonest misappropriation — Jewellery contractually surrendered and entrusted to accused but accused pawned jewellery — Whether pawnbroker entitled to return of jewellery — Whether jewellery came to possession of accused as mercantile agent for owner — Pawnbrokers Act 1972 ss 16(1)(d), 29 & 34 — Sale of Goods Act 1957 s 2*

The complainants had, pursuant to an oral agreement between the complainants and the accused, surrendered and entrusted various items of jewellery ('the exhibits') to the accused to assist in selling them, at a commission. The accused, however, did not sell the exhibits but instead had pawned them to four pawnbrokers, the applicants in this case ('the pawnbrokers'). The accused was charged and convicted on six counts of dishonest misappropriation. The learned magistrate at the close of an inquiry held under s 407 of the Criminal Procedure Code (FMS Cap 6) ('the CPC') ordered that the exhibits be returned to the owners who were the complainants. The pawnbrokers applied for a revision of the order under s 323 of the CPC and s 31 of the Courts of Judicature Act 1964.

Held:

(1) It was plain and obvious that the exhibits had never been lost. Neither were they dishonestly nor fraudulently obtained or acquired by the accused, but were in actual fact voluntarily, intentionally and indeed contractually surrendered and entrusted by the complainants to the accused to assist the complainants in selling them, at a commission (see p 622F).

(2) Therefore, the element of loss, dishonesty or fraud expressly provided for in s 34 of the Pawnbrokers Act 1972 ('the PA') was missing, and notwithstanding the conviction of the accused under s 403 of the Penal Code, which offence had been committed by

the accused after the voluntary, intentional and contractual surrender and entrustment, there could be no doubt that the facts and circumstances did not come within the clear provisions of s 34 of the PA (see p 622F–G). A

(3) The items of jewellery in question came to the possession of the accused as a mercantile agent for and on behalf of the complainants. It was therefore clear that pursuant to the aforesaid provisions contained in s 2 of the Sales of Goods Act ('the SOGA'), the accused was a mercantile agent of the complainants and had in the customary course of business as such agent, authority to sell the goods, viz the exhibits or to raise money on the security of the goods, viz the exhibits to the pawnbrokers (see p 628B, E–F). B C

(4) That being the case, the court found that the learned magistrate has erred in law in holding that the accused was not the agent of the complainants. The learned magistrate had held that the Sales of Goods Act (UK) did not apply, but he had failed to refer to s 2 of the SOGA, which was the written law in relation to the concept of mercantile agent, which expressly provided that a mercantile agent had the authority to raise money on the security of the exhibits. Having done so, the proceeds thereof, ie the loan raised on the security of the exhibits should have been handed over to the complainants respectively and not, as in this case, misappropriated, thereby rendering the accused criminally liable under s 403 of the Penal Code. Hence, there was no doubt that the accused's actual act of pawning the exhibits to the pawnbrokers was in effect carried out by the accused as a mercantile agent of the complainants who had voluntarily, intentionally and contractually surrendered and entrusted the same to the accused (see p 628F–H). D E F

(5) The test to be applied under s 16(1)(d) of the PA was the subjective test, ie whether the individual applicant as pawnbroker may have reasonable cause to believe that the exhibits were to be offered for pawning without the consent of the complainants as the lawful owners. In the circumstances, s 16(1)(d) of the PA relied on by the complainants was not of any assistance to the complainants. In any event, as the accused was a mercantile agent for and on behalf of the complainants, the accused had the authority to carry out the transactions of pawning on behalf of the complainants by raising money on the security thereof under s 2 of SOGA (see pp 629H–I, 630C). G H

(6) For the purposes of s 32 of the PA, 'suspicious circumstances' had been illuminated by the illustrations contained in s 32 of the PA, viz 'reason to suspect that any person in or loitering about any pawnshop has with him any article dishonestly obtained' or 'reason to suspect any article to have been unlawfully obtained'. The crux of 'suspicious circumstances' here and by analogy, s 29 I

of the PA also involved an element of dishonesty in the obtaining or acquisition of the articles to be pawned or offered to be pawned. The evidence before the learned magistrate did not disclose any element of fraud, dishonesty or criminality in the obtaining or acquisition by the accused of the articles pawned to the pawnbroker (see pp 631H–632A).

(7) In the absence of suspicious circumstances, s 29 of the PA did not cast a burden on a pawnbroker to ensure that the pawner was the owner of the article, nor was it the duty of a pawnbroker to investigate the origin of the articles offered to be pawned. The pawnbrokers had not contravened any provisions of the PA. Further, they had not been negligent in accepting the exhibits in the course of the transactions as pawnbrokers (see p 632A–B).

[Bahasa Malaysia summary

Pengadu-pengadu telah, melalui satu perjanjian lisan di antara pengadu-pengadu dengan tertuduh, menyerah dan mengamanahkan pelbagai barangan kemas ('ekshibit-ekshibit tersebut') kepada tertuduh untuk jualan berkomisen oleh tertuduh. Tertuduh, bagai mananapun, tidak menjual ekshibit-ekshibit tersebut tetapi sebaliknya telah mengadaikannya kepada empat pemegang pajak gadai, iaitu pemohon-pemohon dalam kes ini ('pemegang-pemegang pajak gadai tersebut'). Tertuduh telah dipertuduhkan dan disabitkan atas kesalahan perlesapan jenayah. Majistret yang arif telah pada penutupan siasatan yang diadakan di bawah s 407 Kanun Prosedur Jenayah (FMS Cap 6) ('KAJ') mengarahkan ekshibit-ekshibit tersebut dikembalikan kepada tuan-tuanpunya yang merupakan pengadu-pengadu. Pemegang-pemegang pajak gadai tersebut telah memohon untuk satu penyemakan perintah tersebut di bawah s 323 KAJ dan s 31 Akta Mahkamah Kehakiman 1964.

Diputuskan:

(1) Adalah jelas dan nyata bahawa ekshibit-ekshibit tersebut tidak pernah hilang. Ia juga telah tidak diperolehi secara tidak jujur ataupun secara fraud oleh tertuduh. Tetapi pada hakikat yang sebenarnya, ekshibit-ekshibit tersebut telah secara sukarela, dengan sengaja dan sesungguhnya secara kontraktual diserahkan dan diamanahkan oleh pengadu-pengadu kepada tertuduh bagi membantu pengadu-pengadu menjualnya, untuk mendapat komisyen (lihat ms 622F).

(2) Oleh itu, unsur kehilangan, ketidak-jujuran atau fraud yang secara nyata diperuntukkan dalam s 34 Akta Pemegang Pajakgadai 1972 ('APP') tidak wujud, dan meskipun sabitan tertuduh di bawah s 403 Kanun Keseksaan, yang mana kesalahan tersebut telah dilakukan oleh tertuduh selepas penyerahan dan pengamanahan secara suka rela, dengan sengaja dan secara kontraktual, tidak

diragui lagi bahawa fakta-fakta dan keadaan-keadaan tersebut tidak terlingkung di bawah peruntukan-peruntukan jelas s 34 APP tersebut (lihat ms 622F–G). A

(3) Barangan kemas yang dipersoalkan berada dalam milikan tertuduh sebagai ejen persaudagaran untuk dan bagi pihak pengadu-pengadu. Adalah dengan itu jelas bahawa selaras dengan peruntukan-peruntukan yang tersebut di atas yang terkandung dalam s 2 Akta Jualan Barangan 1957 ('AJB'), tertuduh merupakan ejen persaudagaran pengadu-pengadu dan mempunyai kuasa untuk menjual barangan tersebut, yakni ekshibit-ekshibit tersebut, dalam perjalanan perniagaanya yang lazim atau untuk mendapatkan wang atas jaminan barangan tersebut, iaitu ekshibit-ekshibit tersebut, kepada pemegang pajak gadai (lihat ms 628B, E–F). B C

(4) Oleh yang demikian, mahkamah mendapati bahawa majistret yang arif telah tersalah pertimbangan di sisi undang-undang dalam memutuskan bahawa tertuduh bukannya ejen pengadu-pengadu. Majistret yang arif telah memutuskan bahawa Akta Jualan Barangan (UK) tidak terpakai. Tetapi beliau telah gagal untuk merujuk kepada s 2 AJB, yang mana adalah undang-undang bertulis berhubung konsep ejen persaudagaran, yang mana secara nyatanya memperuntukkan bahawa ejen persaudagaran mempunyai kuasa untuk mendapatkan wang atas jaminan ekshibit-ekshibit tersebut. Setelah melakukan sedemikian, hasil darinya, iaitu pinjaman yang diperolehi atas jaminan ekshibit-ekshibit seharusnya diserahkan kepada pengadu-pengadu masing-masingnya dan tidak, seperti mana dalam kes ini, dilesapkan, dengan itu menjadikkan tertuduh bertanggungan secara jenayah di bawah s 403 Kanun Keseksaan. Oleh itu, tidak diragui bahawa tindakan sebenar tertuduh memajakkan ekshibit-ekshibit tersebut kepada pemegang pajak gadai telah secara berkesannya dijalankan oleh tertuduh sebagai ejen persaudagaran pengadu-pengadu yang telah secara sukarela, dengan sengaja dan secara kontraktual menyerahkan dan mengamanahkannya kepada tertuduh (lihat ms 628F–H). D E F G

(5) Ujian yang harus dipakai di bawah s 16(1)(d) APP adalah ujian subjektif, iaitu sama ada pemohon individu sebagai pemegang pajak gadai mungkin mempunyai sebab yang berpatutan untuk mempercayai bahawa ekshibit-ekshibit tersebut telah ditawarkan untuk dipajak tanpa kebenaran pengadu-pengadu sebagai tuanpunya yang sah. Oleh yang demikian, s 16(1)(d) APP yang pengadu-pengadu telah bergantung kepada tidak sama sekali membantu pengadu-pengadu. Dalam sebarang keadaan, oleh kerana tertuduh adalah ejen persaudagaran untuk dan bagi pihak pengadu-pengadu, tertuduh mempunyai kebenaran untuk menjalankan transaksi-transaksi menggadai bagi pihak pengadu-pengadu dengan mendapatkan wang atas jaminannya di bawah s 2 AJB (lihat ms 629H–I, 630C). H I

(6) Bagi tujuan s 32 APP, 'keadaan-keadaan yang meragukan' telah diserlahkan oleh ilustrasi yang terkandung di dalam s 32 APP, yakni 'alasan untuk mensyaki bahawa mana-mana orang yang berada di dalam atau berlengah-lengah di sekitar sebarang kedai pajak gadai mempunyai padanya apa-apa barangan yang diperolehi seacra tidak jujur' atau 'alasan untuk mensyaki apa-apa barangan sebagai telah diperolehi secara salah di sisi undang-undang'. Kemusykilan 'keadaan-keadaan yanmg meragukan' di sini dan melalui analogi, s 29 APP juga melibatkan unsur ketidakjujuran memperolehi atau mendapatkan barangan untuk digadai atau ditawarkan untuk digadai. Keterangan di hadapan majistret yang arif tidak mendedahkan sebarang unsur fraud, ketidakjujuran atau sifat jenayah tertuduh dalam memperolehi atau mendapatkan barangan yang telah digadaikan kepada pemegang gadaian (lihat ms 631H–632A).

(7) Dalam ketiadaan keadaan-keadaan yang meragukan, s 29 APP tidak meletakkan beban ke atas pemegang pajak gadai untuk memastikan penggadai adalah tuanpunya barangan tersebut, dan bukannya tugas pemegang pajak gadai untuk menyiasat asal-usul barangan yang ditawarkan untuk dipajak. Pemegang pajak gadai telah tidak melanggari sebarang peruntukan APP. Selanjutnya, mereka tidak bertindak cuai dalam menerima ekshibit-ekshibit dalam perjalanan transaksi-transkasi sebagai pemegang pajak gadai (lihat ms 632A–B).]

Notes

For cases on dealings with mercantile agent, see 10 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1039–1041.

For cases on inquiry as to ownership, see 10 *Mallal's Digest* (4th Ed, 1999 Reissue) paras 1053–1054.

For a case on pawning of loaned jewellery by borrower, see 10 *Mallal's Digest* (4th Ed, 1999 Reissue) para 1060.

Cases referred to

Bushell v Hammond [1904] 2 KB 563 (refd)

Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors [1985] 2 MLJ 35 (refd)

Ho York Quin v R [1953] MLJ 1 (refd)

Hoh Chee Khim & Ors v PP [1970] 2 MLJ 105 (refd)

R v Nadaison [1935] MLJ 148 (refd)

Reg v Schildkamp [1971] AC 1 (refd)

Rex v Talib bin Saimin [1935] MLJ 275 (refd)

Rex v Yoon Choon Pawnshop & Ors [1939] MLJ 125 (refd)

Sem Hin Pawnshop v R [1952] MLJ 164 (refd)

Tan Ah Choew v PP [1952] MLJ 79 (refd)

Tan Keng Tin, Re; Re Chop Soon Bee [1932] MLJ 134 (refd)

Thai Chong Pawnshop Pte Ltd & Ors v Vankrisappan & Ors [1994] 2 SLR 414 (refd)
Wong Yong Theng v R [1957] MLJ 22 (refd)

Legislation referred to

Civil Law Act 1956
Courts of Judicature Act 1964 s 31
Criminal Procedure Code ss 323, 407(ii)
Factors Act 1889 [UK] s 2(1)
Ordinance No 61 (Pawnbrokers) s 28(1)
Pawnbrokers Act (Cap 222) [Sing] s 31
Pawnbrokers Act 1972 ss 16(1)(a), (d), (2), 28, 29, 30, 31, 32, 33, 34
Pawnbrokers Enactment (Chap 85) s 20
Pawnbrokers Ordinance (Cap 216) ss 27(1)(c)
Penal Code ss 403, 420
Sale of Goods Act 1893 [UK]
Sale of Goods Act 1957 s 2
Sale of Goods (Amendment and Extension) Act 1990 (Act A756)

Appeal from: Criminal Cases No 83–303 of 1998 and No 83–304 of 1998 (Magistrate's Court, Alor Gajah)

CS Chin (*Chin & Yau*) for the applicants.
Vanaja Devi (*Rengganathan & Co*) for the complainants.
Maziah bte Abu (Deputy Public Prosecutor) for the prosecution.

Low Hop Bing J:

Application

This is an application by the applicants ('the pawnbrokers') under s 323 of the Criminal Procedure Code ('the CPC') and s 31 of the Courts of Judicature Act 1964 for a revision of the order made by the learned Magistrate, Alor Gajah on 29 August 2001, at the close of the inquiry held under s 407 of the CPC whereby the exhibits in the form of various items of jewellery ('the exhibits') were ordered to be returned to the owners who were the complainants.

Facts of the case

The complainants had bought the exhibits from one Hooi Wah Jewellery Shop by way of credit, which had not been fully settled on the date of the said inquiry.

The complainants had, pursuant to an oral agreement between the complainants and the accused, surrendered and entrusted the exhibits to the accused to assist in selling them, at a commission. The accused was to pay 10% deposit on the price of the exhibits and the balance in ten instalments. The accused, however, did not sell the exhibits but instead had between June and December 1995 pawned them to four pawnbrokers

A trading as Fah Ngien, Joo Ngien, Lian Shen and Lian Foh, who are jointly the applicants herein.

On 1 January 1996, the complainants lodged a police report against the accused. Consequent upon police investigations, the exhibits were recovered from all the four pawnbrokers.

B The accused was charged before the learned magistrate with six counts of dishonest misappropriation under s 403 of the Penal Code ('the Code'), viz three charges each in cases No 83–303–1998 and No 83–304–1998, respectively.

The accused was found guilty, convicted and sentenced to six months' C imprisonment on each charge, in addition to a fine of RM1,000 per charge in case No 83–303–1998 and to twelve months' imprisonment on each charge, in case No 83–304–1998 and fined RM1,000 on each charge. All the imprisonment terms in all the charges in cases No 83–303 and 304–1998 were to run concurrently.

D *Magistrate's grounds for returning exhibits to complainants*

In making the order returning the exhibits to the complainants, the learned magistrate, in essence, gave the following grounds:

(1) as the complainants had given the exhibits to the accused for sale, the pawn thereof, by the accused to the pawnbrokers, constituted a breach E by the accused of the complainants' authority and so the accused was no longer the complainants' agent, as a result of which the provisions of the Sale of Goods Act 1893 (UK) ('the SOGA (UK)') and the Factors Act 1889 (UK) ('the FA (UK)') do not apply;

(2) the Pawnbrokers Act 1972 ('the PA') casts a burden on pawnbrokers F to ensure that the pawner is the owner of the articles pawned and in this case, the pawnbrokers in accepting the pawns have failed to investigate their origin;

(3) the burden is on the pawnbrokers to prove that they are innocent third parties without notice; and

G (4) the pawnbrokers have been negligent in accepting the pawned articles and has failed to prove that they are innocent third parties without notice.

Submission for pawnbrokers

H Mr CS Chin, learned counsel for the pawnbrokers, submitted that the learned magistrate has erred in law and in fact in arriving at the decision to return the exhibits to the complainants, and that the accused's acts of pawning the exhibits with the pawnbrokers are valid as the complainants had voluntarily surrendered and entrusted the exhibits to the accused as a mercantile agent and the pawnbrokers had bona fide and without notice I accepted the pawns.

It was contended for the pawnbrokers that under the PA, no burden is placed on a pawnbroker to ensure that a pawner is the owner of an article

pawned. It was stressed that it was only under suspicious circumstances that s 29 of the PA imposes a duty on a pawnbroker to enquire as to how a person offering to pawn an article came into possession thereof, and that on either a subjective test or objective test, there are no suspicious circumstances here as the exhibits were pawned to four pawnbrokers on different dates.

As the complainants have surrendered and entrusted the exhibits to the accused to assist in the sale thereof, it was the pawnbrokers' case that the burden is on the complainants to prove that the pawnbrokers are not innocent third parties without notice.

Complainants' contention

Miss Vanaja Devi, learned counsel for the complainants, submitted that the issue which the court has to determine is this: having regard to s 407 of the CPC and ss 28 to 34 of the PA, who is the owner of the exhibits in question? In this regard, she added that the learned magistrate has acted upon the provisions of s 407(ii) of the CPC read with s 34 of the PA in returning the exhibits to the complainants as the owners thereof, as there was no negligence on the part of the complainants who did not expect the exhibits to be pawned by the accused.

(For convenience, unless a contrary intention appears or unless otherwise stated, a reference hereinafter to a section shall be a reference to that section in the PA).

It was argued for the complainants that the pawning of the exhibits by the accused has been found to be a criminal offence under s 403 of the Code and that for the pawnbrokers to be compensated under s 34 of the PA, the burden is on the pawnbrokers to prove that they have fulfilled the provisions of ss 16, 28 and 29 of the PA, which they have failed to do. She contended that the pawnbrokers have been reckless and were motivated by profit without regard to the provisions of the PA.

It was contended for the complainants that the provisions of the SOGA (UK) and the FA (UK) do not apply in Malaysia as we have our Sale of Goods Act 1957 ('the SOGA') and Civil Law Act 1956.

Submission for Public Prosecutor

As in the submission for the complainants, Cik Maziah bte Abu, learned deputy public prosecutor, after referring to the undisputed facts of the case, the gist of which had been alluded to above, submitted that s 34 of the PA applies and the learned magistrate has to consider the provisions thereunder. The learned deputy agreed with the decision of the learned magistrate in returning the exhibits to the complainants as the owners thereof.

On the question of whether the pawnbrokers are entitled to payment under s 34 of the PA, the learned deputy contended that the complainants could not be faulted as their agreement with the accused was for the accused to sell the exhibits and not to pawn them.

A On the other hand, she added that the pawnbrokers should exercise care in accepting the pawns from the accused and must accept the risks involved.

In any event, she left it to the discretion of the court to decide on the issue of whether the court should make an order pertaining to the B compensation to the pawnbrokers.

Decision of the court

Section 407 of the CPC

C From the submissions and the record of proceedings, it is apparent to me that the inquiry was conducted by the learned magistrate under s 407(ii) of the CPC, the material or relevant portion of which merits reproduction as follows:

> D ... at the conclusion of any inquiry ... in any criminal court the court may make such order as it thinks fit for the ... disposal of any property ... whatsoever produced before it ... regarding which any offence appears to have been committed or which has been used for the commission of any offence.
>
> The power herein conferred upon the court shall include the power to make an order for ... the delivery to any person of such property, but shall be exercised subject to any special provisions relating to ... delivery contained in E the written law under which the conviction was had.

The exhibits are the properties which had been used by the accused for the commission of the offence of dishonest misappropriation under s 403 of the Code. The power of the court under s 407(ii) of the CPC is subject to any special provisions relating to delivery contained in the written law under F which the conviction was had, ie the provisions of s 403 of the Code. However, it is to be observed that s 403 of the Code does not provide for or contain any special provisions relating to the delivery of the exhibits. Hence, it is axiomatic that the general provisions contained in s 407(ii) of the CPC would apply exclusively.

G Section 34 of the PA

In my view, the contention by the complainants' learned counsel and also by the learned deputy that the provisions of s 34 of the PA are the special provisions referred to in the second limb of s 407(ii) of the CPC cannot be sustained as s 34 of the PA is not the written law under which the accused's H conviction was had, which was, as alluded to above, a conviction under s 403 of the Code.

Further, it must be immediately emphasized that s 34 of the PA is not applicable for another reason. For a proper picture and perspective to be presented, it is necessary to reproduce s 34 of the PA as follows:

I Restoration to the owner by pawnbroker of pledge dishonestly obtained

If any proceedings before any court or magistrate it shall appear that *any article which has been lost or dishonestly or fraudulently obtained or acquired is held in*

> *pawn by any pawnbroker*, the court or magistrate may take evidence as to the circumstances of such pawning, and if the court or magistrate so thinks fit may order the delivery of the article to the owner either on payment to the pawnbroker of the amount lent thereon and of the profit due, or on payment to any part of such loan or profit, or without payment, as to the court or magistrate may seem just and fitting according to the conduct of the owner and the pawnbroker and the circumstances of the case. (Emphasis added.)

A careful reading of s 34 of the PA demonstrates that it has application only where 'any article which has been lost or dishonestly or fraudulently obtained or acquired is held in pawn by any pawnbroker'. Hence, the circumstances which would attract the application of s 34 of the PA are confined to the following:

(1) any article which has been lost is held in pawn by any pawnbroker; or

(2) any article which has been dishonestly obtained or acquired is held in pawn by any pawnbroker; or

(3) any article which has been fraudulently obtained or acquired is held in pawn by any pawnbroker.

An article is said to have been lost when the owner is deprived of it without any voluntary action, conduct or prior knowledge of the owner. The facts before the learned magistrate did not show that the exhibits have been lost.

The other circumstances, viz dishonesty or fraud in obtaining or acquiring the exhibits as expressly contained in s 34 of the PA, must relate to the action or conduct of a person such as the accused at the time of the obtaining or acquisition when the complainants surrendered and entrusted the exhibits to the accused and not thereafter. At that point of time, when the accused obtained or acquired the exhibits, the accused could not be said to have done so dishonestly or fraudulently.

Hence, it is plain and obvious that the exhibits have never been lost. Neither were they dishonestly nor fraudulently obtained or acquired by the accused, but were in actual fact voluntarily, intentionally and indeed contractually surrendered and entrusted by the complainants to the accused to assist the complainants in selling them, at a commission. Therefore, the element of loss, dishonesty or fraud expressly provided for in s 34 of the PA is missing, and notwithstanding the conviction of the accused under s 403 of the Code, which offence had been committed by the accused after the voluntary, intentional and contractual surrender and entrustment, there can be no doubt that the facts and circumstances do not come within the clear provisions of s 34 of the PA.

Element of criminality

The element of criminality (in the obtaining or acquisition of the items held in pawn by the pawnbrokers) appears to be the common characteristics expounded in the judgments relied on by the learned counsel for the complainants and the learned deputy. That being the case, in deference to the enormous effort expended by them, I shall now embark on a thorough analysis thereof.

In *Hoh Chee Khim & Ors v PP* [1970] 2 MLJ 105, an inquiry was held under s 20 of the then Pawnbrokers Enactment (Chap 85) ('PE') by the learned President of the Sessions Court Kuala Lumpur wherein he ordered that all the exhibits comprising the various items of jewellery in a cheating case be returned to the complainant unconditionally and without payment. The accused there, one Maria @ Zainon bte A Manaf, had pleaded guilty to three charges of cheating and was convicted and sentenced to six years' imprisonment plus police supervision. She was a confidence trickster of the highest order who thrived on superstition and human weaknesses. She admitted that by preying on the complainant's weakness, she was able to induce him to part with money and jewellery. The modus operandi was a promise that by the use of supernatural powers which she possessed, supernatural beings could multiply the money and valuables handed to her. Thereby, she managed to induce the complainant to part with considerable cash and jewellery. Her ingenuity did not stop there. Some of the jewellery were pawned to the pawnbrokers by inducing innocent third parties to act as pawners under dubious pretexts which she concocted in order that she would not be directly implicated. The evidence obviously showed that the accused there has dishonestly or fraudulently obtained or acquired the exhibits. Section 20 of the then PE read as follows:

> If in any proceedings before any court or magistrate it shall appear that any article which has been lost or dishonestly or fraudulently obtained or acquired is held in pawn by any pawnbroker, such court or magistrate may take evidence as to the circumstances of such pawning, and if such court or magistrate so think fit may order the delivery of such article to the owner either on payment to the pawnbroker of the amount lent thereon and of the profit due, or on payment of any part of such loan or profit, or without payment, as to such court or magistrate may seem just and fitting according to the conduct of the owner and the circumstances of the case.

Section 20 of the PE is substantially in pari materia with s 34 of the PA and was applied there. In my view, the facts there were distinguishable from the facts in the case before the learned magistrate and now before me, as the exhibits herein had never been dishonestly or fraudulently obtained or acquired by the accused from the complainants, but were at the risk of repetition, voluntarily, intentionally and contractually surrendered and entrusted by the complainants to the accused. In the circumstances, I hold that the decision in *Hoh Chee Khim* does not support the contention advanced for the complainants and the public prosecutor in the instant case.

In *Sem Hin Pawnshop v R* [1952] MLJ 164, there was an unsuccessful appeal by a pawnbroker from an order made by the magistrate under s 28 of the then Pawnbrokers Ordinance ('PO') ordering that a watch, which had been unlawfully pawned, be returned to the owner. The facts are essential. The owner had left the watch in his house and the new maid servant was alone in the house. Upon his return, his watch had disappeared and so had the maid servant. The watch was found on the following day at the appellant's pawnshop, where it was pawned for $60, while its market price was $175. The relevant governing law which Brown J of the Singapore

High Court, exercising appellate criminal jurisdiction, had to determine was s 27(1)(c) of the then PO which contained the following provisions: A

> (c) If in any proceedings before a police court or other court it appears to the court that any goods and chattels brought before the court have been *unlawfully pawned* with a pawnbroker;
>
> The court, on proof of the ownership of the goods and chattels, may, if it thinks fit, order the delivery thereof to the owner, either on payment to the pawnbroker of the amount of the loan or any part thereof, or without payment thereof or of any part thereof, as the court, according to the conduct of the owner and the other circumstances of the case, seems just and fitting. (Emphasis added.) B

In that case, Brown J held that where ownership, having been proved by common law, the owner would be entitled to the articles unconditionally, however careless he had been. In a case where the conduct of both parties is free from criticism, in no circumstances would the court order the owner to pay part of the loan; and the innocent pawnbroker must suffer for having taken a risk which is inseparable from his trade. C D

It is to be observed that s 27(1)(c) of the then PO differs substantially from s 34 of the PA in that the learned magistrate and on appeal Brown J had to construe the words 'unlawfully pawned' in s 27(1)(c) of the then PO which clearly were not in pari materia with s 34. The facts in that case and those in the instant case were demonstrably distinguishable as the watch in question had been lost through the action of the maid servant and there was an instance of unlawful pawning. In the circumstances, I am of the view that Brown J's judicial pronouncement is not of any assistance to the complainants. E

In *Ho York Quin v R* [1953] MLJ 1, s 27 of the then PO was considered by Sir Charles Murray-Aynsley CJ (as he then was). There, the accused had been convicted under s 420 of the Code for cheating in respect of a watch belonging to one Ong Loi Chen. The watch had been pawned by the accused with Chop Teck Chong Pawnshop, of which the appellant was the managing partner. After the conviction of the accused, the learned magistrate held he had no discretion but to order the return of the watch to the complainant. On appeal by the pawnbroker, Sir Charles Murray-Aynsley CJ (as he then was) held that the court has the fullest discretion and that in cases of doubt or difficulty an order should not be made. This decision seems to be at variance with the decision of Brown J in *Sem Hin Pawnshop*. Be that as it may, the governing law under consideration, ie s 27(1)(c) of the then PO, is not in pari materia with s 34 in the instant case. Further, there was the element of criminality, ie cheating which constitutes a dishonest or fraudulent obtaining or acquisition of the watch which was eventually pawned. In the circumstances, I am also unable to see how support may be derived therefrom by the complainants in the instant case. F G H

In *Tan Ah Choew v PP* [1952] MLJ 79, one Tan Ah Choew entered into a hire purchase agreement with one Tan Sam Boon for the sale of a bicycle. The hire purchase agreement provided that the bicycle should remain Tan Ah Choew's property until the instalments were fully paid, while the I

hirer Tan Sam Boon retained possession. The hirer paid a deposit. On the very day the hirer signed the hire purchase agreement, he pawned the bicycle. He was charged with criminal breach of trust but was acquitted, whereupon the bicycle was returned to the pawnbroker. On revision, Abbott J sitting in High Court Malacca, held that the offence of illegal pawning contrary to s 30(1) of the then PO had been committed by the hirer in that the accused had knowingly pawned the property of Tan Ah Choew without the latter's authority and so the learned judge ordered the bicycle to be restored to its rightful owner, Tan Ah Choew. The facts in that case are somewhat different from those in the present case as the hirer was not an agent of the owner. Further, the learned judge did not refer to the provisions of the law which enabled him to make the order in question. I am therefore unable to see how that judgment is of any assistance to the complainants herein.

In *Wong Yong Theng v R* [1957] MLJ 22, the words 'unlawfully pawned' in s 27(1)(c) of the then PO came up for judicial consideration by Whitton J of the Singapore High Court. The headnote therein which gave a clear picture of the episode there and the decision of the learned judge may be reproduced as follows:

> In this case the accused at the trial was charged with criminal breach of trust of certain jewellery. It appeared that the accused had obtained jewellery which belonged to one Hazara Singh, from the wife of that man, and had pawned them. At the conclusion of the trial the learned magistrate acquitted the accused and then ordered: (i) that the jewellery be returned to the owner, ie Hazara Singh; and (ii) that the accused should repay the pawnbrokers the sums he obtained from them on the jewellery. The learned magistrate held that the wife had by transferring the jewellery secretly without the knowledge of her husband invested the jewellery with the character of stolen property and consequently the pawnings were unlawful within the meaning of s 27 of the Pawnbrokers Ordinance, thus conferring upon the court the discretion to make an order for the disposal of the property. He was also of the opinion that if s 27 of the Pawnbrokers Ordinance did not apply, he had power to make the order under s 430 of the Criminal Procedure Code. The pawnbrokers appealed against the order.
>
> Held:
>
> (1) the finding that the jewellery was stolen property could not be justified and therefore s 27 of the Pawnbrokers Ordinance could not be applied in this case;
>
> (2) the court had power to make an order for disposal of the property under s 430 of the Criminal Procedure Code;
>
> (3) in the circumstances of the case the order that should be made is that the jewellery be returned to the owner on payment by him to the pawnbrokers of half the sums for which the jewellery was pledged.

The decision of Whitton J seems to be supportive of the case for the applicants (pawnbrokers) rather than the complainants.

In *R v Nadaison* [1935] MLJ 148, certain articles of jewellery were stolen from a woman named Patemabhi by Nadaison who was sentenced to two months' rigorous imprisonment. At the conclusion of the trial before

the magistrate, a gold necklace was admittedly a portion of the stolen property recovered from Yong Shin pawnshop where it had been pawned by the thief for $120. The learned magistrate ordered that it should be returned to the owner, Patemabhi, on payment by her to the pawnbroker of the sum for which it had been pawned by the thief. This order was made under s 28(1) of Ordinance No 61 (Pawnbrokers) ('the Ordinance'), the relevant portion of which reads as follows:

> If any person is convicted in any court of *feloniously taking or obtaining any goods and chattels*, and it appears to the police or other court that the same have been pawned with a pawnbroker, the court, on proof of the ownership of the goods and chattels, may, if it thinks fit, order the delivery thereof to the owner, either on payment to the pawnbroker of the amount of the loan or any part thereof, or without payment thereof or of any part thereof, as to the court, according to the conduct of the owner and the other circumstances of the case, seems just and fitting. (Emphasis added.)

The facts there were different in that they demonstrated that the accused was convicted of *theft* which obviously came within the act of 'feloniously taking or obtaining' the necklace, and hence s 28(1) of the Ordinance applied there.

Thai Chong Pawnshop Pte Ltd & Ors v Vankrisappan & Ors [1994] 2 SLR 414 represents a modern case concerning the disposal of exhibits, viz *stolen* items which had been pawned to pawnbrokers. The facts of the case there clearly established that the disposal inquiry was held by the district judge consequent upon the conviction of the accused for several *burglaries* wherein the accused had obtained certain items of jewellery and thereafter pledged them with the petitioner pawnshop and five other shops. There was little dispute on ownership. The district judge ordered that the jewellery be given back to the respective owners upon the condition that 10% of the pawned value on each of the items pledged be paid to each of the pawnshops involved. On revision, Yong Pung How, CJ (Singapore) had to consider, inter alia, the governing law there, ie s 31 of the Pawnbrokers Act (Cap 222) ('their Act') which, where relevant, reads as follows:

> (1) ...
>
> (c) If in any proceedings before a Magistrate's Court or other court it appears to the court that any goods and chattels brought before the court have been *unlawfully pawned* with a pawnbroker, the court on proof of the ownership of the goods and chattels, may, if it thinks fit, order the delivery thereof to the owner, either on payment to the pawnbroker of the amount of the loan or any part thereof, or without payment thereof or of any part thereof, as to the court, according to the conduct of the owner and the other circumstances of the case, seems just and fitting.
>
> (2) The court may also adjourn the proceedings for the attendance of the pawnbroker, and may summon the pawnbroker to attend at the adjourned hearing, and if, after hearing the pawnbroker, the court is of opinion that the pawnbroker has not exercised due care in taking in pawn any stolen property, the court may order the pawnbroker to pay a fine not exceeding $2,000. (Emphasis added.)

The decision of the learned Chief Justice of the Singapore High Court is based on s 31 of their Act which is not in pari materia with s 34 of the PA in Malaysia. Further, as in the earlier cases in the series, there was an element of criminality in the obtaining or acquisition of the article held in pawn by the pawnbroker. Therefore, I hold that the Singapore decision is of no assistance to the complainant and the Public Prosecutor.

Mercantile agent

In the submission for the pawnbrokers in the instant case that the accused is a mercantile agent of the complainants, reliance is placed on two local decisions, viz *Rex v Yoon Choon Pawnshop & Ors* [1939] MLJ 125 and *Rex v Talib bin Saimin* [1935] MLJ 275.

Rex v Yoon Choon Pawnshop & Ors concerned an appeal from an order made by the then District Judge of Penang after holding an inquiry, ordering the return to Ipekdjian Brothers Ltd of certain jewellery which had been pledged with the pawnshops. Ipekdjian Brothers Ltd employed one Khoo Sian Tat ('Khoo') as a salesman, to whom Ikepdjian Brothers Ltd handed certain jewellery 'to be sold by him at a price not less than the amount set out opposite each item of goods; and either such price of same or the goods are to be returned on demand by the company, and the property in the said goods shall remain in the company until the said price is paid to the company'. The said district judge found that Khoo was a mercantile agent. Khoo gave certain articles to one Yeoh Oon Chye ('Yeoh') for the purposes of sale, Yeoh having told him that he had a buyer. Khoo had no suspicion that there was anything wrong and Yeoh gave him receipts therefore, made out as having been 'received from Ikepdjian Brothers Ltd' each receipt being marked 'For approval'. In fact, Yeoh had no buyer but at once pawned the articles with the different pawnbrokers who were the appellants. On Khoo's complaint, Yeoh was charged with cheating Khoo under s 420 of the Code and was convicted upon pleading guilty. On appeal, Howes J held that Khoo's intention was clear as he had delivered the articles to Yeoh as a broker or agent, intending not only that Yeoh should have possession, but should dispose of the property by sale, and that it is immaterial that Yeoh while ostensibly agreeing to the contract of agency, yet secretly intended to disregard it. Howes J further held that any agent such as Yeoh who has been entrusted with the power of sale is given the lesser power of pledging.

In *R v Talib bin Saimin*, at 9am on 19 April 1935, the complainant wished to dispose of an American Dollar and being unable to obtain more than $60 for it, handed it to the accused who said he could sell it for at least $65. An arrangement was made for the accused to meet the complainant again at 1pm on the same day and either bring the money or return the gold coin to the complainant. However, the accused kept the gold coin and later pawned it for $50 to the Thai Loy pawnshop. On the complainant's report to the police, the accused was arrested and charged with criminal breach of trust of the American Gold Dollar valued at $60. He pleaded guilty and was sentenced to three months' rigorous imprisonment. The gold coin was

ordered to be restored to the complainant, without the owner of the pawnshop being notified of the proceedings, ie in the absence of the pawnshop owner. Terrell J held that the accused was a mercantile agent who had possession of the goods with the consent of the true owner and accordingly could either sell or pledge them. There was no evidence that the pawnbrokers were not acting in good faith and they are entitled to the possession of the gold coin as security for the money advanced, thereby reversing the magistrate's order.

Reverting to the undisputed facts before me, it is my specific finding that the items of jewellery in question came to the possession of the accused as a mercantile agent for and on behalf of the complainants. The concept of mercantile agents, with particular reference to the business of pawnbrokers had been clearly expounded by Howes J in *Yoon Choon Pawnshops & Ors* and by Terrell J in *R v Talib bin Saimin* by applying s 2(1) of the FA (UK) which appeared to be the governing law at the time when those two judgments were delivered. In Malaysia, the modern concept of 'mercantile agent' is to be found in s 2 of the SOGA which as revised came into force on 21 September 1989. As amended by the Sale of Goods (Amendment and Extension) Act 1990 (Act A756), the SOGA was extended to the states of Melaka and Penang with effect from 23 February 1990. The concept of 'mercantile agent' as contained in s 2 of the SOGA merits reproduction as follows:

> 'mercantile agent' means a mercantile agent having in the customary course of business as such agent authority either to sell goods, or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods;

It is therefore clear that pursuant to the aforesaid provisions contained in s 2 of the SOGA, the accused is a mercantile agent of the complainants and has in the customary course of business as such agent, authority to sell the goods, viz the exhibits or to raise money on the security of the goods, viz the exhibits to the pawnbrokers. That being the case, I hold that the learned magistrate has erred in law in holding that the accused was not the agent of the complainants. The learned magistrate had held that the SOGA (UK) did not apply, but he has failed to refer to s 2 of the SOGA which is our written law in relation to the concept of mercantile agent, which expressly provides that a mercantile agent has the authority to raise money on the security of the exhibits. Having done so, the proceeds thereof, ie the loan raised on the security of the exhibits should have been handed over to the complainants respectively and not, as in this case, misappropriated, thereby rendering the accused criminally liable under s 403 of the Code. Hence, there is no doubt that the accused's actual act of pawning the exhibits to the pawnbrokers was in effect carried out by the accused as a mercantile agent of the complainants who had voluntarily, intentionally and contractually surrendered and entrusted the same to the accused.

Quite apart from the above, it is necessary for me to examine and consider the relevant provisions contained in ss 16, 28 and 29 of the PA which have been raised by the respective counsel in their submissions.

Sections 16, 28 and 29 of the PA

It was submitted for the complainants that the burden is on the pawnbrokers to establish that they have complied with or have not contravened the provisions of ss 16, 28 and 29 of the PA.

Section 16 of the PA reads as follows:

> Business hours and restrictions as to receiving articles in pawn and carrying other business.
>
> (1) No licensee shall receive in pawn:
>
> (a) any article between the hours of 6pm and 8am;
>
> (b) any article from any person who appears to be intoxicated or who is under the age of sixteen years;
>
> (c) any article bearing any mark or sign denoting it to be the property of the government of Malaysia or of any state;
>
> (d) any article which he may have reasonable cause to believe, whether from the nature of the article or from the person of the pawner or from the circumstances of the transaction or otherwise, to be offered for pawning without the consent of the lawful owner thereof.
>
> (2) No licensee shall conduct or transact any part of his business of pawnbroking or keep any pledge in pawn in any place other than the licensed shop.
>
> (3) No licensee shall use the licensed shop for the conduct or transaction of any business other than that of pawnbroking.

In so far as the evidence before the learned magistrate is concerned, as regards s 16 of the PA, the pertinent provision which requires consideration is s 16(1)(d) of the PA, ie whether the exhibits are the articles which the pawnbrokers may have reason to believe, whether from the nature of the articles or from the person of the pawner or from the circumstances of the transaction or otherwise, to be offered for pawning without the consent of the lawful owner thereof.

Upon a careful evaluation of the evidence adduced before the learned magistrate, it is to be observed that the accused had effected 20 pawning transactions with the first applicant (Kedai Pajak Fah Ngien) over a period of some six months between 14 June 1995 and 23 December 1995; 21 transactions with the second applicant (Kedai Pajak Joo Ngien) over a period of some six months between 10 June 1995 and 23 December 1995; seven transactions with the third applicant (Kedai Pajak Lian Shen) over a period of two and a half months between 10 August 1995 and 26 October 1995; and finally with the fourth applicant (Kedai Pajak Lian Foh) over a period of three and a half months between 14 August 1995 and 28 November 1995. In my view, the test to be applied under s 16(1)(d) of the PA is the subjective test, ie whether the individual applicant as pawnbroker may have reasonable cause to believe that the exhibits were to be offered for pawning without the consent of the complainants as the lawful owners. Cross examination of SP9, Chin Kon Tau, from the first applicant pawnbroker revealed that the accused, ie the pawner appeared

honest (jujur) and there was no police report in relation to the exhibits on the dates of pawning. The police report was lodged by the complainants on 1 January 1996, well after the pawning transactions were effected by the accused. The exhibits have been pawned at different pawnshops and the pawning transactions appear to have been carried out in accordance with s 14 of the PA, ie particulars were entered in the pawnbroker's book and pawn tickets given to the accused. The pawned articles were not received between the hours of 6pm and 8am and so the pawnbrokers have not contravened s 16(1)(a) of the PA. The transactions were effected or conducted in the licensed pawnshops under s 16(2) of the PA and finally no charges under the PA had been preferred against the applicants, as it is clear that none of the pawnbrokers had contravened any provision of the Act. In the circumstances, I am of the view that s 16(1)(d) of the PA relied on by the complainants' learned counsel is not of any assistance to the complainants. In any event, as the accused is a mercantile agent for and on behalf of the complainants, the accused has the authority to carry out the transactions of pawning on behalf of the complainants by raising money on the security thereof under s 2 of the SOGA.

Section 28 of the PA is reproduced as follows:

> Unlawful pawning
>
> No person shall pawn or attempt to pawn the article of any person without being duly authorized or employed in that behalf.

This is a penal provision prohibiting a person such as the accused from pawning or attempting to pawn the articles of the complainants without being duly authorized or employed in that behalf. If at all the accused indeed was acting in contravention of s 28 of the PA, the prosecution would have preferred a charge thereunder against the accused. The fact that the prosecution has declined to do so demonstrates that the accused was not acting in contravention of s 28 of the PA; and so there was no unlawful pawning.

Section 29 of the PA, where relevant, merits reproduction as follows:

> Duty of licensee to enquire and detain any person when transaction is suspicious
>
> Whenever any person shall under suspicious circumstances offer to pawn any article ... or whenever any person shall offer to pawn any article corresponding to the description given to any licensee by any police officer of any article lost or fraudulently or dishonestly disposed of or acquired, the licensee shall enquire of such person how he came into possession of the article or of the pawn ticket, as the case may be; and if such person shall not satisfactorily account for his possession thereof or shall give false information as to the possession or as to the name and place of abode of himself or of the owner of the article or pawn ticket, or if there be any other reason to suspect any dishonest dealings in respect of the article or pawn ticket the licensee shall detain such person and deliver him together with the article or pawn ticket into the custody of a police officer.

Section 29 of the PA specifically refers to 'suspicious circumstances', but the words 'suspicious circumstances' have not been specifically defined in

A the Act. From the provisions of s 29 of the PA, it seems clear to me that 'suspicious circumstances' must necessarily involve an element of fraud, dishonesty or criminality so that clear evidence beyond reasonable doubt is required before the provisions of s 29 of the PA can be invoked, as the second limb of s 29 of the PA involves the duty of a pawnbroker to detain the pawner and deliver him into the custody of a police officer. It involves a B deprivation of the fundamental liberty of the pawner and therefore can only be invoked if there is clear evidence beyond reasonable doubt of 'suspicious circumstances'. What exactly are these suspicious circumstances?

By way of analogy, the words 'suspicious circumstances' used in the marginal note to s 32 of the PA may throw some light. Section 32 of the PA C is enacted in the following manner:

> Police may arrest persons under suspicious circumstances
>
> Any police officer having reason to suspect that any person in or loitering about any pawnshop has with him any article dishonestly obtained, may detain such person and require him to produce any article he may have with D him; and if such person shall refuse to comply with such requirement or shall produce any article which the police officer has reason to suspect to have been unlawfully obtained, he may take such person to the nearest police station, there to be dealt with according to the law.

Generally, marginal notes such as the words 'suspicious circumstances' in E s 32 of the PA above cannot be used as an aid to construction in order to ascertain the meaning of the words used in the section. Hence the words 'suspicious circumstances' cannot be so construed as to give a different meaning to the clear words of s 32 of the PA. However, marginal notes do indicate the intention that may be derived from the words used in the particular section such as s 32 of the PA. In the circumstances, the words F 'suspicious circumstances' may be referred to as a useful aid, performing the function of serving as a brief guide to the content of the section, as has been expounded by Abdoolcader SCJ in *Foo Loke Ying & Anor v Television Broadcasts Ltd & Ors* [1985] 2 MLJ 35 at p 41. Marginal notes (such as 'suspicious circumstances') may not form part of a section, but, they are of some assistance as it shows the drift of the section (see Collins MR in *Bushell* G *v Hammond* [1904] 2 KB 563). They should not be rejected as aids to construction, per Lords Reid and Upjohn in *Reg v Schildkamp* [1971] AC 1. There appears to be no reason why marginal notes should not be referred to assist the interpretation of the section, per Terrel J in *Re Tan Keng Tin; Re Chop Soon Bee* [1932] MLJ 134.

H For the purposes of s 32 of the PA, 'suspicious circumstances' have been illuminated by the illustrations contained in s 32 of the PA, viz 'reason to suspect that any person in or loitering about any pawnshop has with him any article dishonestly obtained' or 'reason to suspect any article to have been unlawfully obtained'. The crux of 'suspicious circumstances' here and by analogy, s 29 of the PA also involves an element of dishonesty in the I obtaining or acquisition of the articles to be pawned or offered to be pawned. The evidence before the learned magistrate did not disclose any element of fraud, dishonesty or criminality in the obtaining or acquisition

by the accused of the articles pawned to the pawnbroker. In the circumstances, I am of the view that s 29 of the PA again does not support the contention presented for the complainants. In the absence of suspicious circumstances, s 29 of the PA does not cast a burden on a pawnbroker to ensure that the pawner is the owner of the article, nor is it the duty of a pawnbroker to investigate the origin of the articles offered to be pawned. I am of the view that the pawnbrokers have not contravened any provisions of the PA. Further, they have not been negligent in accepting the exhibits in the course of the transactions as pawnbrokers.

Conclusion

On the foregoing grounds, I hold that the order of the learned magistrate that the exhibits be returned to the complainants cannot be sustained and is hereby quashed. Section 407(ii) of the CPC, which is the governing law, provides that the court may make such order as it thinks fit for the disposal of any property produced before it. On the facts and the law, I order that the exhibit be returned to the respective pawnbrokers to whom they have been pawned respectively, subject however to the complainants' respective right to redeem all the exhibits, with interest at the rate prescribed in the PA and the regulations made thereunder up to the date when these exhibits were recovered by the police from the respective pawnbrokers; and further, the same prescribed rate of interest from today until the date of redemption. Alternatively, if the exhibits are no longer with the complainants, I order that the complainants pay to the applicants their respective share of the loan raised on the security of the exhibits together with the interest thereon with effect from the respective dates of the pawning until the date the exhibits were recovered by the police from the pawnbrokers respectively, and further interest from today until full realization thereof by the complainants.

Order accordingly.

Reported by Peter Ling